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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND BRADLEY EVITT,

Defendant and Appellant.

C078659

(Super. Ct. No. MF037255A)

Police Officer Kyle Gomes contacted defendant Raymond Bradley Evitt after an anonymous tip reported a suspicious vehicle parked in the Flying J Travel Plaza parking lot. During Gomes's conversation with defendant, the officer requested permission to search defendant's car. Defendant consented; Gomes found methamphetamine and indicia of drug sales in the car. After the trial court denied his motion to suppress evidence, a jury found defendant guilty of possessing a controlled substance and transporting a controlled substance. Defendant now appeals, arguing Gomes unlawfully detained him. He also contends the evidence at trial was

insufficient to convict him of transporting methamphetamine. We conclude the encounter was consensual and not a detention. We also conclude the evidence was sufficient to convict defendant of transporting methamphetamine. Accordingly, we affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On November 24, 2013, the Ripon Police Department received a 911 call reporting a suspicious vehicle in the Flying J Travel Plaza parking lot. The caller described the suspicious vehicle as “a white four-door Cadillac with body damage to the right side of the vehicle.” Officer Gomes responded to the call and found a Cadillac matching that description parked in the Flying J Travel Plaza’s parking lot.

Gomes parked approximately 50 yards away from the Cadillac and, having the license plate number checked, confirmed the car was not stolen. Gomes walked over to the car. He saw defendant sitting in the driver’s seat; no one else was in the car. Gomes told defendant he had been “reported as a suspicious person.” Defendant responded, telling Gomes he and his wife drove to the truck stop to take a shower. Gomes asked defendant for identification and defendant gave him a California identification card. While standing about two feet away from defendant, Gomes used his radio to contact dispatch for “a wants and warrants check.” A few minutes later, dispatch informed Gomes defendant was “clear [on] wants and warrants” but was on searchable probation. Defendant overheard the report and told Gomes he was not on searchable probation.

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<sup>1</sup> The facts are taken from the hearing on the motion to suppress evidence. Additional facts adduced at trial are included in the discussion below as they are relevant to defendant’s claim of insufficient evidence.

Gomes asked defendant if he had anything illegal in his car; he said he did not. Gomes then asked defendant if he could search the car and defendant gave him permission. Gomes asked defendant to step out of the car and he did. Defendant sat on the curb with Gomes's sergeant, who had arrived after Gomes, standing next to him. Defendant was not handcuffed.

Gomes began his search on the passenger side of the car. As soon as he opened the car door, Gomes saw a glass pipe used for smoking methamphetamine on the floorboard. Gomes opened the center console and found a small round plastic container with razor blades inside. He then removed "the interior" of the center console and found a shallow compartment with a "door" on it underneath. Gomes removed that entire compartment and, underneath, he found a digital scale and "dime baggies" tied to other baggies containing silver and gold coins. Several of the baggies contained "a clear crystal substance," described as methamphetamine. Gomes also found a large amount of cash in defendant's front pocket and a torch lighter and silver teaspoons in the passenger compartment. Gomes arrested defendant.

The People charged defendant with possession of a controlled substance (Health & Saf. Code, § 11378) and transportation of a controlled substance for purposes of sale. (Health & Saf. Code, § 11379.) The People also alleged defendant was twice previously convicted of a strike offense. (Pen. Code, §§ 1170.12, subd. (b) & 667, subd. (d).) Defendant pleaded not guilty to the charges and denied the enhancement allegations. Defendant moved, pursuant to Penal Code section 1538.5, to suppress any and all evidence seized as a result of an illegal detention, search, and arrest. The trial court denied defendant's motion, ruling the encounter with Gomes was consensual and not a detention. The trial court also found defendant gave consent to the search without coercion or duress.

A jury subsequently found defendant guilty on both counts and, in a bifurcated proceeding, the trial court found true one of the two allegations that defendant was previously convicted of a strike offense. The People offered no evidence on the second allegation of a prior strike conviction. Accordingly, the trial court struck the allegation.

The trial court sentenced defendant to serve six years in state prison. The court ordered defendant to pay various fines and fees and awarded him 74 days of custody credit.

## DISCUSSION

### I

#### *Motion to Suppress*

Defendant contends he “was unlawfully detained without reasonable cause because the detention was based solely on unspecified, uncorroborated, ‘suspicious’ driving reported to the police by an anonymous tipster.” We conclude the encounter was consensual and not a detention.

#### A.

##### *Standard of Review*

In reviewing the denial of a motion to suppress, we must accept all facts in support of the ruling, including all reasonable inferences and deductions, if supported by substantial evidence. (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922.)

#### B.

##### *Fourth Amendment Principles*

A police officer may approach an individual in a public place and ask questions without implicating the Fourth Amendment. “The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an

individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

There is no bright-line rule for determining if an encounter is consensual. (*Ohio v. Robinette* (1996) 519 U.S. 33, 39 [136 L.Ed.2d 347, 354].) "[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." (*Florida v. Bostick* (1991) 501 U.S. 429, 439 [115 L.Ed.2d 389, 401-402].) Whether a person would have believed he or she was free to leave is to be evaluated in light of the totality of the circumstances, rather than emphasizing particular details of that conduct in isolation. (*Michigan v. Chesternut* (1988) 486 U.S. 567, 573-574 [100 L.Ed.2d 571-572].)

Factors that might indicate an unlawful detention has taken place include: (1) the presence of several police officers; (2) an officer's display of a weapon; (3) some physical touching of the person; (4) the use of language or a tone of voice indicating compliance with the officer's request might be compelled. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554-555 [64 L.Ed.2d 497, 509] (*Mendenhall*).) "The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred." (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821; see also *Mendenhall*, at p. 554 [64 L.Ed.2d at p. 509].)

## C.

### *Defendant Was Not Detained*

Defendant makes a single argument on appeal that he was detained: “any reasonable person questioned by an armed, uniformed law officer for being suspicious would have felt he was being detained and not free to leave.” We disagree.

The totality of circumstances surrounding defendant’s arrest reveals the encounter was consensual. Gomes arrived at the parking lot alone and approached defendant on his own. (*Mendenhall, supra*, 446 U.S. at p. 554 [64 L.Ed.2d at p. 509].) Gomes did not activate the siren or lights on his patrol car, he did not display his weapon, he did not touch defendant, and there was no evidence his tone of voice or language indicated compliance was required. (*Ibid.*; see also *People v. Brown* (2015) 61 Cal.4th 968, 978 [activating sirens or lights can amount to a show of authority].) And prior to defendant giving his consent to search his car, the encounter lasted only a few minutes.

Defendant suggests he was detained because Gomes took his identification card. Providing an officer with identification does not, without more, transform a consensual encounter into a detention. (See *People v. Leath* (2013) 217 Cal.App.4th 344, 353 [“a voluntary relinquishment of one’s identification card does not constitute a seizure as long as the encounter is consensual under the totality of the circumstances”].) We conclude the encounter was consensual and not a detention.

## II

### *Transportation of Methamphetamine*

Defendant further contends the evidence was insufficient to convict him of transporting methamphetamine. Specifically, he contends there was no evidence the

methamphetamine was in the car while the car was moving. We conclude the evidence was sufficient.

“ ‘In reviewing the sufficiency of evidence under the due process clause of the Fourteenth Amendment to the United States Constitution, the question we ask is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” ’ [Citations.] We apply an identical standard under the California Constitution. [Citation.] ‘In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court “must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” ’ [Citation.] The same standard also applies in cases in which the prosecution relies primarily on circumstantial evidence. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1175.)

If the evidence supports the jury’s findings, the opinion of a reviewing court that the circumstances might also support a contrary finding does not allow for reversal of the judgment. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) Thus, we review the whole record rather than isolated portions. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Here, defendant testified he and his wife were driving a long distance late at night. They stopped for breakfast, then drove to the Flying J Travel Plaza to take showers. Defendant’s wife went inside to pay for the showers, leaving defendant in the car, where Gomes found him. Defendant’s wife walked out from the Flying J Travel Plaza while Gomes was still talking to defendant. From that evidence, the jury could reasonably have inferred the methamphetamine was in the car when defendant was driving, before

he parked at Flying J. (See *People v. Meza* (1995) 38 Cal.App.4th 1741, 1746 [transportation of a controlled substance “can be established by circumstantial evidence and any reasonable inferences drawn from that evidence”].) Defendant contends that, based on that same evidence, the jury also could have concluded defendant obtained the drugs after he parked his car at Flying J. That a contrary conclusion may be reached does not allow for reversal of the judgment. (*People v. Johnson, supra*, 26 Cal.3d at p. 578.)

#### DISPOSITION

The judgment is affirmed.

\_\_\_\_\_/s/  
HOCH, J.

We concur:

\_\_\_\_\_/s/  
BLEASE, Acting P. J.

\_\_\_\_\_/s/  
DUARTE, J.